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FEDERAL ELECTION COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
the Cook 2000 Re-election )  
Committee and Camille Cook, )  
as treasurer,<sup>1</sup> Representative Merrill A. Cook, )  
and Cook Associates, Inc. )

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**SENSITIVE**

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED

That the Commission: (1) internally generate Representative Merrill A. Cook and Cook Associates, Inc. as respondents; (2) find reason to believe that the respondents violated 2 U.S.C. § 441b; and (3) offer to enter into pre-probable cause conciliation with the respondents and approve the attached proposed conciliation agreements.

II. BACKGROUND

Pursuant to a complaint filed by Mike Zuhl, as chairman of the Utah State Democratic Committee, the Federal Election Commission ("Commission") found reason to believe that the Cook 98 Re-election Committee (now known as the Cook 2000 Re-election Committee, *see* footnote 1) and its treasurer ("Committee"), may have violated the Federal Campaign Act of 1971, as amended (the "Act"), during the 1996 election cycle. Specifically, the Commission found reason to believe that the Committee may have violated 2 U.S.C. § 434(b) first, by failing to appropriately report the Committee's disbursements to and debts owed to the campaign's primary management consultant and fund-raiser, the R.T. Nielson Company, and second, by failing to

<sup>1</sup> On March 15, 1999, the Commission was informed that the name of the Committee was being changed to the Cook 2000 Re-election Committee. Notice was received on June 1, 1999, that Camille Cook, wife of Merrill A. Cook, was replacing Avis Lewis as treasurer.

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appropriately report a disputed debt with an advertising agency, Phillips, Twede & Spencer, Inc. Following these findings, the Office of the General Counsel ("Office") engaged in informal discovery. This discovery began with a letter to the Committee's counsel requesting detailed answers to questions relating to the methodology utilized by the 1996 campaign to calculate and report its expenditures and assumption of debt with regard to two vendors, the R.T. Nielson Company ("Nielson") and Phillips, Twede & Spencer, Inc. ("PTS"). In response, Counsel submitted a series of letters and produced a variety of documentation. Thereafter, this Office sought documents found missing from the original production and clarification regarding certain points made in the Committee's responses.

Included in the Committee's multiple submissions were: nearly all the checks issued by the Committee to Nielson and PTS; a majority of the invoices submitted to the Committee by the two vendors; two unsigned handwritten charts delineating payments made to Nielson and PTS throughout the campaign; copies of certain memoranda; a copy of Nielson's answers to a set of interrogatories promulgated by Cook in the civil suit; copies of invoices sent to PTS from subcontractors who worked on the Cook account; monthly statements issued to the Committee by PTS; correspondence and memoranda exchanged between PTS and the Committee relating to the services being provided and payment schedules; and copies of documents reflecting certain radio and television time purchases made by PTS.

In May of 1999, this Office briefly circulated a General Counsel's Report that included a recommendation for entering into pre-probable cause conciliation with the Committee. Contemporaneously, staff learned of a newspaper article that purported to

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describe the Commission's investigation of the Cook Committee. Jock Friendly, *FEC Examines Cook Charges*, The Hill, January 27, 1999, at 3. This article, while inaccurate with respect to certain aspects of this Office's investigation, did provide heretofore unknown details from discovery taken in a civil suit filed by the R.T. Nielson Company against the Committee.<sup>2</sup> This new information indicated that there were additional events that occurred during the 1996 campaign that were potentially relevant to this Office's inquiry. Specifically, the article suggested that the Committee may have utilized corporate monies to fund some campaign activities and that the candidate, Merrill Cook<sup>3</sup> ("Cook"), may have intentionally concealed debts to Nielson so as to make the campaign's financial situation appear more favorable. As a result, the General Counsel's Report was withdrawn and informal discovery was renewed. This discovery included the review of certain deposition transcripts from the civil suit, including those of Merrill A. Cook, Avis Lewis, the Committee's treasurer during the events in question, and Ron Nielson, the President of Nielson.<sup>4</sup> This review, in addition to providing information concerning the debt reporting issue, also uncovered information that supports new reason to believe findings involving the contribution and receipt of prohibited corporate funds.

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<sup>2</sup> Nielson filed suit against the Committee to recoup consulting fees that the vendor claimed were owed from the 1996 congressional campaign. On April 14, 2000, a Utah jury found in favor of the plaintiff vendor, awarding the company \$193,922 in damages. The Cook Committee was awarded \$19,521 on a counter claim relating to PAC fund raising. *Veterans to Watch - Utah 02: Cook must Pay Ex-consultant \$174k*, House Race Hotline, 4/17/00, 2000 WL 6361931. There is no indication that the case has been appealed.

<sup>3</sup> Merrill A. Cook lost his bid for re-election in the June 27, 2000 Republican Primary. Since that time he has stated publicly that he is interested in either pursuing the Chairmanship of Utah's State Republican Party or trying to regain his congressional seat in 2002. *Open Seats -Utah 02: Travels with Merrill*, House Race Hotline, 10/11/00, 2000 WL6364156; Lee Davidson, *Despite Losing Primary, Cook Vows Return to Congress*, Deseret News, 11/8/00, at A37, 2000 WL 28447732.

<sup>4</sup> Obtaining copies of these transcripts was somewhat time consuming given that the Committee's counsel in the FEC matter had recently withdrawn their representation of Mr. Cook in the civil suit. No reason for the withdrawal was ever provided. Ultimately, counsel was able to obtain the transcripts for this Office from Mr. Cook's successor counsel.

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This Report will serve to summarize this Office's investigation. Based on the evidence gathered, this Office is recommending that the Commission find reason to believe that Representative Merrill A. Cook, Cook Associates, Inc., and the Committee violated 2 U.S.C. § 441b.<sup>5</sup> This Office is also recommending that the Commission offer to enter into pre-probable cause conciliation with the respondents and approve the attached proposed conciliation agreements.

### III. ANALYSIS

#### A. Debt Reporting Violations<sup>6</sup>

##### 1. R.T. Nielson and Company

This Office's investigation showed that the respondents failed to report the Committee's accumulation of debt to Nielson during the 1996 campaign in an accurate and timely manner. Specifically, while the Committee appears to have appropriately reported most expenditures made to Nielson throughout the campaign, errors with respect to debt disclosure occurred in the first six FEC filings for the 1996 election cycle.

In response to questions about the methodology used to calculate the debt owed to Nielson through the 1996 election cycle, the Committee reported that it relied on information provided by Nielson. The Committee admits that it made no effort to estimate the debt accumulating throughout 1996, believing that Nielson would supply the correct figure after the November 5, 1996 general election.

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<sup>5</sup> On 7/2/98, the Commission found no reason to believe that Mr. Cook or the Committee violated 2 U.S.C. § 441b in connection with specific allegations contained within the complaint that these respondents' failure to pay off campaign debt owed to Nielson and PTS from the 1996 election constituted acceptance of corporate contributions from those two vendors. The §441b recommendations made in the instant report are based on a different theory and stem from internally generated facts.

<sup>6</sup> For a more detailed discussion of the law applicable to the debt reporting violations discussed herein, see the First General Counsel's Report, at pages 9-11.

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The Nielson invoices received by the Committee throughout the campaign, the vendor's billing statements, and the checks issued in response, demonstrate that the Committee was put on notice well in advance of November 5<sup>th</sup> that it was accumulating a debt to Nielson. In addition, deposition testimony from the civil suit indicates that at least as early as the primary, which was held on June 25, 1996, there were ongoing discussions between Merrill A. Cook and Ron Nielson regarding this debt.<sup>7</sup> (Nielson dep. at Vol. I, pges. 17-18) Even if the Committee was not able to calculate the exact amount of the debt owed to Nielson, the law expressly requires campaign committees to make reasonable estimates of monies owed to vendors and other entities in their disclosure reports and then to follow up with corrective amendments. 11 C.F.R. § 104.11(b).

a. \$20,000 and \$9,000 Debt

The Committee failed to report a debt of \$29,000 to Nielson that was incurred during the time period encompassed by the 1996 April Quarterly Report (1/1/96 - 3/31/96). First, the Committee failed to report as debt \$20,000 incurred as a result of a written Services Agreement signed by the parties on March 5, 1996. (Attachment 1) In pertinent part, this document stipulated that the Committee was responsible for paying "\$40,000 for general contracting services through May 4, 1996." Once the Committee chose to make a partial payment of \$20,000, which it reported in its 1996 April Quarterly Report, the balance on the debt of \$20,000 should have been reported as a debt to Nielson on the Summary Page and on a Schedule D form. There is no indication anywhere in this report that the Committee had incurred a debt to Nielson during this period. This \$20,000

<sup>7</sup> The deposition transcripts referenced in this Report are available in the Office of General Counsel.

debt was gradually paid off during the next two reporting periods and the payments were reported as itemized disbursements as the payments were actually made. There were no indications in these reports that these disbursements represented payments on a pre-existing debt. Thus, the respondents failed to accurately report the existence and resolution of this particular debt in three consecutive disclosure reports, namely the 1996 April Quarterly Report, the 1996 12 Day Pre-Convention Report (4/1/96 - 4/14/96), and the 1996 Pre-Primary Report (4/15/96 - 6/5/96).

Second, it appears that the Committee failed to appropriately disclose the existence of a \$9,000 debt owed to Nielson for services, including a voter identification program, conducted during the 1996 April Quarterly reporting period. The total cost of these services was \$12,000. The 1996 April Quarterly Report reflects that a \$3,000 payment for the program was made on March 26, 1996. However, this report was inaccurate as the \$9,000 debt incurred during that period was not disclosed. Although the Committee paid off the obligation with a \$9,000 disbursement dated April 1, 1996, which was itself properly reported, the failure of the respondents to disclose that a pre-existing \$9,000 debt was extinguished at the beginning of the 1996 12 Day Pre-Convention Report (4/1/96 - 4/14/96) was in error. (Attachment 2)

b. \$25,000.03 Debt

The March 1996 Services Agreement (Attachment 1) specified that if Cook won in the state convention and became the Republican Congressional candidate, Nielson would receive a \$4,000 a month consulting fee during the time period encompassed by the general election. Both parties agree that at some point prior to the convention, which was held on May 5, 1996, the Committee and Nielson entered into an oral modification of

the written agreement whereby the Committee agreed to pay a lump sum of \$50,000 for services performed from that date until the Republican Primary Election, which was held on June 25, 1996. The evidence is that Nielson and Cook agreed that this fee could be paid in six installments.<sup>8</sup> (Nielson dep. at Vol. I pgs 172-179; Cook dep. at Vol. II page 233, Vol. III pgs 389-391 and 589-594) The treasurer, Avis Lewis, apparently knew about this new financial arrangement. (Lewis dep. at Vol. I page 111, Vol. II pgs 359, 360; Cook dep. at Vol. II page 595) The Pre-Primary Report (4/15/96 - 6/5/96), invoices and the checks indicate that three installments were paid in May. (Attachment 3) The Committee properly recorded these payments as itemized disbursements on Schedule B of this disclosure report. However, the Committee failed to disclose the existence of this debt or that it had been paid down through payments totaling \$24,999.66 on the Summary Page or on a Schedule D. In addition, the respondents failed to disclose that a debt of \$25,000.34 remained at the end of the reporting period. The Committee made additional payments, and appears to have paid off this obligation in the next two reporting periods. Neither of the two subsequent reports, namely the 1996 July Quarterly Report (6/6/96 - 6/30/96) and the 1996 October Quarterly Report (7/1/96 - 9/30/96), in which these payments are reflected, disclose that these disbursements made to Nielson were payments on an ongoing debt incurred during the 1996 Pre-Primary reporting period.

c. \$2,175 Debt

During the Pre-Primary reporting period, the Committee also failed to report, as either a debt or a disputed debt, an additional \$2,175.00 owed to Nielson. The invoice and the checks indicate that a \$5,000 disbursement made during that period was only a

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<sup>8</sup> The total amount billed and eventually paid under this oral agreement was \$49,999.65.

partial payment on a \$7,175 bill for office supplies, including toner, postage and stationary. (Attachment 4) There is no clear indication in any of the subsequent disclosure reports when or if this obligation was ever fully paid. Based on one of its responses during discovery, it appears that the Committee disputed the appropriateness of at least part of the charges on the invoice, a position that was not revealed in any disclosure report. It may be that the \$2,175.00 became part of the suit filed by Nielson after the election to recoup moneys that the vendor claimed were owed as a result of work performed during the 1996 election. Even if this amount ultimately became part of the legal dispute between the parties, the Committee was required to report all or part of these particular charges as a debt or as a disputed debt for as long as the obligation remained outstanding.

d. \$5,000 Debt

Pursuant to the aforementioned March 1996 Services Agreement, the campaign was committed to pay Nielson a \$5,000 bonus if Cook won the Republican Primary on June 25, 1996. Nielson issued an invoice (#96172), dated June 26, 1996, to the Committee for this bonus. Based on the responses, billing statements, checks and the relevant disclosure report, it appears that the Committee neither paid the bonus when it came due in June, nor listed it as a debt in the July Quarterly Report (6/6/96 - 6/30/96). This bonus was not paid until August 7, 1996, which fell during the next reporting period. (Attachment 5) The payment was noted in the 1996 October Quarterly Report (7/1/96 - 9/30/96) as a simple disbursement. The Committee erred by failing to report this debt as outstanding in the 1996 July Quarterly Report and as extinguished in the 1996 October Quarterly Report.

e. Disputed Debt for GOTV Calls

The evidence indicates that the Committee also failed to report a disputed debt arising from GOTV calls placed by Nielson. Nielson issued two invoices, each dated June 26, 1996, with the same number (#96173), for what appears to be the same calls. One invoice charges \$7,625.25 for the calls, the other charges \$9,251.97. (Attachment 6) The latter charge appears consistent with the written Services Agreement that dictated a 91 cent price per call placed during the convention period, but it is unclear if the parties orally modified that part of the written Agreement. There is no indication in any of the materials produced, or in any of the FEC disclosure reports, that the Committee paid Nielson either amount for these calls. Counsel for the Committee has confirmed that invoice # 96173 was part of the legal dispute between the parties. Therefore, the Committee should have identified these charges as a disputed debt starting with the 1996 July Quarterly Report and continuing until the issue was resolved between the parties.

f. \$150,000 Debt

At some time during the primary period, it appears that Cook and Nielson entered into an additional oral modification of the written Services Agreement. Ron Nielson testified in the civil suit that this modification provided that Nielson would be paid \$150,000 for management services performed during the general election cycle.<sup>9</sup>

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<sup>9</sup> The existence of this additional oral modification appears to have been the centerpiece of the suit filed by Nielson against Cook. There was reportedly testimony at the April 2000 trial that the payments for the general election period agreed to in the original written contract were far below the market rate for such services. Amy Keller, *Cooked Goose?*, Roll Call, 4/17/00, 2000 WL 8734186.

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Evidence including certain invoices, checks and the Nielson billing statements appear to substantiate the existence of this oral modification. Nielson issued an invoice for \$150,000 (# 96182) labeled "Cook for Congress" on July 29, 1996. (Attachment 7) According to the Committee's counsel, Nielson voided this invoice and, indeed, it never appeared on Nielson billing statements. The total amount of the new consulting fees was, however, represented in other invoices: one (#96199) dated July 29, 1996, for \$50,000, was labeled "Bonus for Primary Election;" a second invoice, also bearing the number 96199 and also dated July 29, 1996, and also for \$50,000, was labeled "general consulting fee;"<sup>10</sup> another invoice (# 96200), dated July 29, 1996, was issued in the amount of \$100,000 for "consulting fee for general election." (Attachment 8) One of the invoices numbered 96199 in the amount of \$50,000, and the invoice numbered 96200 for \$100,000, appear on the Nielson billing statement. (Attachment 9)

The Committee, through its responses, and the candidate, through his deposition testimony in the civil suit, deny that Cook orally agreed to pay Nielson \$150,000 for management consulting services provided during the general election period. The Committee and Cook claim that these invoices were entirely bogus. (Cook dep. at Vol. II pgs 291, 293, Vol. III pgs 447, 455 and 643) This position, however, is contradicted by the Committee's issuance of checks to Nielson with the invoice numbers 96199 and 96200 written into the memo portion of each check. In her deposition testimony, Avis Lewis attempted to explain why those invoice numbers appear on so many of the

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<sup>10</sup> The Committee has contended that the \$50,000 primary bonus charge was duplicative and did not reflect actual amounts owed. The Committee also states that Nielson instructed it to ignore this particular charge. Nielson testified in the civil suit that Cook requested that the \$150,000 charge be split into two invoices for convenience and so that funds raised could more easily be allocated between the primary and general cycles. (Nielson dep. at Vol. I pgs 224-225 and Vol. III pgs. 25-27)

Committee's checks to Nielson. According to the treasurer, Nielson failed to submit invoices for the \$4,000 monthly consulting fees owed under the March 1996 written contract, and when asked to issue checks to Nielson for these fees, rather than leave the memo line blank, she testified that she would occasionally pull random invoices from a pile on Mr. Cook's desk and apply those numbers to the given check. (Lewis dep. at Vol. I pge. 162) However, the only invoices from the pile that were used in this manner were apparently #96199 and #96200. This explanation is also undercut by Ms. Lewis' testimony that it was the usual practice for Merrill A. Cook to review the Nielson monthly statements with the invoices and select those invoices that were to be paid. (Lewis dep. at Vol. I, pge 206) Therefore, it appears that there was a \$150,000 debt owed by the Committee to Nielson.

The \$150,000 of debt should have been disclosed on the Summary Page and on a Schedule D affixed to the 1996 July Quarterly Report. The evidence demonstrates that the Committee began making payments on this debt, amounting to \$20,500, during the 1996 October Quarterly reporting period. It made additional payments totaling \$24,000 during the 1996 12 Day Pre-Election reporting period, and \$16,000 during the 1996 30 Day Post-Election report. While the Committee reported all these monies as disbursements, the continued existence of this debt and the paydown on it should have been disclosed on its FEC reports. If the Committee did not acknowledge the validity of the invoices reflecting the \$150,000, it should have identified these charges as disputed beginning at the very latest in the 1996 October Quarterly filing.

g. \$10,616.77 and \$1,083.31 Debts

The evidence also shows that the campaign did not pay Nielson an additional \$10,616.77 for bills incurred during the 1996 October Quarterly reporting period. Even though the Committee contested the legitimacy of these charges, this amount should have been identified on that disclosure report and if necessary, those that followed, as a disputed debt. In addition, there were \$1,083.31 in charges for a variety of other items billed/incurred during the 1996 October Quarterly reporting period that were never paid or contested at the time. This amount should also have been identified as a debt or a disputed debt on that disclosure report and, if necessary, on those that followed.

Notwithstanding the various debts incurred throughout 1996, the first time the Committee acknowledged the existence of any outstanding debt to Nielson was after the election with the filing of its 1996 30 Day Post-Election Report (10/17/96 - 11/25/96). The Committee reported debt in the amount of \$37,441.66 as having been incurred during that filing period. This figure was provided to the Committee by Ron Nielson.<sup>11</sup>

On January 31, 1997, the Committee amended its 1996 30 Day Post-General report to change the amount and manner of the debt owed to Nielson. The amended Form 3, Schedule D disclosed two figures: \$7,128.32, which was the amount the Committee believed it owed Nielson, and \$176,182.86, which Nielson claimed was owed for services performed during the campaign. The Committee also indicated for the first time in the Amended 1996 30 Day Post-General Report that the exact amount of the debt was in dispute. The only changes in the Cook Committee's subsequent disclosure filings

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<sup>11</sup> Both Cook and Avis Lewis testified in the civil suit that Nielson provided this information at some point after the November election. (Cook dep. at Vol. II, pgs 528- 38; Lewis dep. at Vol. I, pgs 104-108)

have been in the amounts claimed by each party. Prior reports were not amended to show when the debts, or disputed debts, were incurred and paid down.

2. Phillips, Twede & Spencer, Inc.

The main issue with respect to this vendor is whether the Committee appropriately reported its debt to PTS on the Amended 30 Day Post-Election Report (10/17/96 - 11/25/96), the 1996 Year End Report (11/26/96 - 12/31/96) and the 1997 Mid-Year Report (1/1/97 - 6/20/97). The evidence suggests that the exact amount of the post-election debt to PTS became a matter of dispute sometime in December 1996, and the dispute was not formally resolved until the end of January 1997.

The Committee hired PTS in March of 1996 to provide advertising related services on an "as requested" basis. During the campaign, PTS created and disseminated promotional materials and advertisements. Lacking a written contract with PTS, the Committee calculated and reported all financial obligations on a task by task basis. In accordance with what the Committee alleges is the "normal practice" with media consultants, "most payments to PTS were made in advance of the television and radio ads put together by the vendor." Given the nature of the services performed, there were many instances where the campaign initially overpaid for the final product and was therefore due, and received, credits on its account. The evidence indicates that the Committee was accurately disclosing expenditures.

Near the end of the campaign, the normal practice of pre-paying or over-paying for services did not apply and the Committee accumulated debts to PTS. According to the Committee, any debts owed to PTS were reported as "best estimate(s)." The 1996 30 Day Post-Election Report (10/17/96 - 11/25/96), filed on December 4, 1996, recorded

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a debt of \$6,583.99. This amount, which was reported to have been incurred during that period, was not identified as being an estimate.<sup>12</sup> On January 31, 1997, the Committee filed an Amended 1996 30 Day Post-Election Report in which the amount of debt to PTS incurred during that period was changed to \$13,006.65. The cover letter accompanying this filing explicitly stated that "there is no difference in the amount Phillips Twede Spencer is claiming and the campaign amount." The Committee made a payment to PTS on this debt in the amount of \$4,012.56 on December 19, 1996, as reflected on the 1996 Year End Report. According to the Committee's 1997 Mid-Year Report, the remainder of the debt was extinguished with a payment of \$8,994.09.

On their face, these disclosure reports indicate that the Committee accumulated a debt to PTS in the amount of \$13,006.65 at some point during the 1996 30 Day Post-Election period, and fully paid off this obligation in two installments as reflected in the next two disclosure reports. However, the evidence compiled by this Office reveals instead that the exact amount of debt accumulated during the post election period became a matter of dispute sometime in December 1996, and that this dispute was not formally resolved until the end of January 1997.<sup>13</sup>

The available information indicates that the Committee incurred a debt to PTS during the 1996 30 Day Post-Election reporting period (10/17/96 - 11/25/96) in

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12 Debts to PTS were disclosed in the following reports: the 1996 October Quarterly Report; the 1996 12 Day Pre-Election Report; the 1996 30 Day Post-Election Report; the Amended 1996 30 Day Post-Election Report; the 1996 Year End Report; and the 1997 Mid-Year Report. None of the debt figures reported in these disclosure documents are noted to be estimates. Based on the evidence, however, it appears that the debt figure disclosed in the 1996 30 Day Post-Election Report must have been an estimate. Although the Committee failed to accurately disclose this figure "as estimated," this Office does not recommend proposing an additional penalty as any such violation ultimately concerns the same monies as those involving the main reporting violations described in this Report.

13 It should be noted that the Committee has not refuted the existence of a disputed debt with PTS. In fact, in its response to the original complaint in this matter, the Committee acknowledged the existence of a "garden variety" billing dispute.

connection with a series of radio and television spots that it sponsored in the final weeks of the campaign. These bills became the focal point of a dispute at some point during the 1996 Year End disclosure period (11/26/96 - 12/31/96). (Attachment 10) On December 15, 1996, PTS informed the Committee that \$16,689.18 was owed for advertising services. Several days later, the Committee made a payment of \$4,012.96 that it requested PTS to accept as final settlement of the account. PTS refused to accept the check for \$4,012.96 as payment in full, but did apply it to the balance, thus reducing what PTS claimed was still owed to \$12,676.82. (Attachment 10) The parties thereafter engaged in what is described in the documents as "protracted and hard fought"<sup>14</sup> negotiations resulting in a written agreement stipulating that the amount of \$8,994.09 would serve "as payment in full for all services rendered by PTS." This Memorandum of Understanding and Agreement, signed on January 30, 1997, states in pertinent part that it was entered into by PTS and the Committee to settle and resolve *the billing dispute* between them." (emphasis added) (Attachment 11)

The information outlined above demonstrates that the Amended 1996 30 Day Post-Election Report and the cover letter that accompanied the filing contained several inaccuracies. First, the amount of the debt disclosed (\$13,006.65) appears to have been an estimated figure, and second it is not clear that this was an amount on which the two sides agreed. None of the materials provided by the Committee or PTS indicate that during this disclosure period (10/17/96 - 11/25/96) the parties agreed that \$13,006.65 would cover the services the advertising agency had rendered at the close of the

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<sup>14</sup> The evidence indicates that prior to the resolution of this dispute, PTS considered filing a lawsuit against the Committee.

campaign. The Committee's 1996 Year End Report (11/26/96 - 12/31/96) also inaccurately disclosed its debt to PTS. As stated above, it appears that the Committee became aware that there was a dispute with the vendor over the amount of money the Committee owed at some point during this disclosure period. Yet, the Report filed on January 31, 1997 discloses an outstanding beginning balance of \$13,006.65, one payment of \$4,012.56, and a closing balance of \$8,994.09. This report was inaccurate as it did not disclose that a debt dispute had arisen during the period. Instead of accurately reflecting the campaign's financial obligations to PTS, the Committee based the debt figures recorded in both the Amended 30 Day Post-Election and the 1996 Year End Reports on the total amount of the debt owed on the date that these reports were filed, which was on January 31, 1997. In addition, the 1997 Mid-Year Report (1/1/97 - 6/20/97), which disclosed only that a payment of \$8,994.09 had been made on a debt to PTS, should have recorded the existence of the disputed debt at the beginning of the period and reported that the payment of \$8,994.09 made on January 30, 1997 represented a negotiated settlement of that dispute.

3. Knowing and Willful

According to *The Hill* article referenced above, Ms. Lewis testified in the civil suit that Mr. Cook "wanted to make sure that reported cash-on-hand figures always exceeded debts owed." In addition, she reportedly stated that the candidate held up payments of certain bills "because he wanted [his FEC] report to look as favorable as he could." If true, such conduct might mean that the Committee intentionally filed inaccurate FEC disclosure reports in violation of 2 U.S.C. §§ 434, 437g(a)(5)(B). Based on the available information, however, there does not seem to be sufficient evidence from the civil suit to

conclude that the Cook Committee intentionally concealed debts during the 1996 election cycle.

In order to establish a knowing and willing violation the evidence would have to demonstrate that the Committee acted with the "full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). See 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

Despite the best efforts of Nielson's attorney in the civil suit to establish that Avis Lewis knew the requirements of the Act and willfully failed to report the Committee's debts appropriately, the treasurer displayed substantial confusion regarding the Act's debt reporting requirements. Both Ms. Lewis and Merrill A. Cook testified that a cash basis accounting system was used during the campaign, *i.e.*, a system of accounting that treats as income only that which is actually received and as expense only that which is actually paid out. The testimony and materials gathered through discovery suggest that Ms. Lewis merely carried over the accounting practices she used on a daily basis at Cook Slurry's corporate offices to her duties as treasurer of the campaign committee. Thus, the failure of the Committee to appropriately report the debt to Nielson, which firm generated the largest bills to the campaign, apparently resulted from a fixed adherence to that

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accounting method.<sup>15</sup> (Lewis dep. at Vol. I pges 96, 97, 104-108, Vol. II pge 258; Cook dep. at Vol. III. pges 524-526, 528-538)

Moreover, the Committee's failure to pay all its bills in a timely fashion appears to stem in part from ready cash problems rather than any deliberate effort to manipulate the reporting system and hide the level of debt carried by the campaign. Indeed, the Committee's reports disclose several instances where debt (to other vendors) was reported and exceeded cash on hand during the particular reporting period. And, although the testimony indicates that the candidate was concerned about fundraising and wanted to rely more on donors than on his own resources, it was widely known that Merrill A. Cook was wealthy and could, and did, largely fund his own campaigns. Accordingly, it is unlikely that the Committee deliberately concealed debts to make the public think that it had a large amount of available cash on hand.

**B. 441b Violations and Additional Violations of 434(b)**

The Act prohibits any corporation from making any expenditure or contribution, directly or indirectly, in connection with a Federal election, and prohibits their officers and/or directors from consenting to such activities. The statute also prohibits any political committee from knowingly accepting such prohibited corporate contributions.

2 U.S.C. § 441b.

In the first day of her deposition in the civil suit, Avis Lewis stated that, in return for agreeing to assume the additional responsibilities of campaign treasurer, she became a

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<sup>15</sup> It should be noted that Avis Lewis readily admitted in her deposition that she used the same sort of methods in calculating and reporting disbursements and debt during the 1994 election campaign. (Lewis dep. at Vol. I pge 258) It is therefore likely that the campaign committed the same sort of reporting violations during that election cycle. However, the statute of limitations for these violations, if they occurred, has expired.

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salaried employee of Cook Slurry, instead of having her pay based entirely on plant production as it formerly had been. Ms. Lewis, whose position at the time appears to have been that of Mr. Cook's secretary/office bookkeeper, admitted that the change resulted in "a modest increase" in pay.<sup>16</sup> (Lewis dep. at Vol. I, pages 23-26; Cook dep. at Vol. I pges 131, 132) However, during the second day of the deposition, Ms. Lewis wholly recanted this testimony, asserting that she had been confused by counsel and that her work for the Committee during that cycle was entirely voluntary. Any increase in pay was, she claimed, as a result of a re-negotiated pay package. (Lewis dep. at Vol. II, pages 222, 223) This revised testimony followed a telephone discussion with Congressman Cook, who contacted Ms. Lewis after reading a copy of the first day's deposition transcript. (Lewis dep. at Vol. II pges 222, 223; Cook dep. Vol. I pges 7-12, 16) The Congressman testified at his deposition that the treasurer was not paid for her campaign work and stated that any increase in pay she received around that time was due to the firm converting to fixed salaries from a production based compensation system. Mr. Cook stated that the payment change was company wide. (Cook dep. at Vol. I pges 7-12) Ron Nielson also testified on this issue, but had no first hand knowledge that Ms. Lewis was in fact compensated for her services as campaign treasurer. (Nielson dep. at Vol. II, pges 57, 58)

Pursuant to 11 C.F.R. § 100.7(b)(14), legal and accounting services rendered to or on behalf of an authorized candidate committee are not contributions if the entity paying

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<sup>16</sup> Cook Slurry is the name under which Cook Associates, Inc. does business. Avis Lewis has been an employee of the company since the mid-1980's. According to counsel, her compensation package in 1996 amounted to \$46,100. After the 1996 election, she apparently assumed the position of comptroller. Ms. Lewis served as the treasurer for Merrill A. Cook on six campaigns for public office, including his runs for Congress in 1994, 1996 and 1998.

for the services is the regular employer of the individual rendering the services and if those services are solely to ensure compliance with the Act. However, the campaign has to report, via a memo entry on a Schedule A, the value of the service (the amount of compensation paid by the employer) as well as the name of the person(s) providing the service and the date any such service was provided. 11 C.F.R. § 104.3(h). The disclosure reports submitted by the Committee during the 1996 election cycle do not reflect the receipt of any accounting services from Ms. Lewis. If Ms. Lewis' employer underwrote her accounting services to the campaign to ensure compliance with the Act, and the campaign failed to disclose it, then the Committee may have committed an additional violation of 2 U.S.C. § 434(b).

While Ms. Lewis' recantation of her initial testimony raises obvious concerns, this Office is not recommending that the Commission pursue the question as to whether Ms. Lewis' compensation during the 1996 election cycle may have constituted a direct corporate contribution to the campaign. Establishing that such a violation occurred would be difficult in view of the sworn testimony of Mr. Cook and Ms. Lewis that her services during the 1996 campaign were entirely voluntary as well as the limited time remaining for this investigation.

Even if Ms. Lewis' work as the Committee treasurer was voluntary and did not in fact result in her receiving additional compensation, there has been sufficient information uncovered relating to corporate resources being used to benefit the 1996 Cook campaign that this Office is recommending that the Commission internally generate Representative

21.04.405.2253

Merrill A. Cook and Cook Associates, Inc.<sup>17</sup> as respondents and find reason to believe that these respondents, as well as the Committee, violated 2 U.S.C. § 441b

According to the Commission's regulations, Ms. Lewis was entitled to volunteer for the campaign and even, within certain limits, perform some limited services on company time and on company property. For example, employees of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity that does not exceed one hour per week or four hours per month and which does not interfere with the organization's normal activities. Such employees are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a)(1). When an individual goes beyond "incidental use" of corporate facilities to benefit a candidate or political committee, that employee is required to reimburse the corporation for the use of those facilities at the normal and reasonable rental rate. Such reimbursements must be made within a commercially reasonable time. These categories of payments are considered in-kind contributions and as such must be reported by the benefiting campaign committee in its periodic disclosure filings. 11 C.F.R. §§ 114.9(a)(2) and 104.13. Any corporation that permits its employee's political activities to exceed the limited safe harbors afforded by the Act is considered to have violated 2 U.S.C. § 441b.

Avis Lewis' use of company facilities and resources in performing her treasurer duties for the campaign appears to have gone well beyond "incidental use." Ms. Lewis

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<sup>17</sup> According to Dun & Bradstreet, Inc., Cook Associates, Inc. was started in 1973 and 100% of its capital stock is owned by Merrill A. Cook. Avis Lewis serves as the corporate secretary. *See also*, Jennifer K. Nii, *Salaries are Relative*, Deseret News, 9/19/99, at A01, 1999 WL 26533743. Mr. Cook served as company President from its inception until he was sworn into Congress in January of 1997. Cook dep. at Vol. I, pges 5 & 6. Since his loss in the June primary, Mr. Cook has resumed full control of the company. Jim Wolf, *Lame Duck Making the Most of his Final Days in Congress*, Salt Lake Tribune, 10/10/00, at D1, 2000 WL 378404043.

21.04.405.2255

testified that she performed her duties on company time, while on company premises utilizing company resources, including Cook Slurry ledgers and other accounting materials. Mr. Cook, who up until at least the end of the summer was campaigning out of the corporate office, has testified that he was aware that Ms. Lewis was performing her duties as treasurer from the Cook Slurry headquarters. He testified that, while at work, she engaged in such campaign related activities as maintaining records, handling campaign accounts and making payments to vendors. The treasurer herself admitted that she spent an average of one or two days a week on her Committee responsibilities, which far exceeded the 1 hour per week, 4 hours per month limitation allowed by the regulations. (Lewis dep. at Vol. I, pgs 28-30; Cook dep. at Vol. I, pgs 30, 72, 75, 124; Vol. II, pgs 246-248) Representative Merrill A. Cook, as her direct employer and an officer of the corporation, was aware of Ms. Lewis' level of activity and permitted her use of corporate assets on behalf of the campaign. There is no indication in any of the assembled materials that Cook Associates, Inc. sought reimbursement for the use of its resources for the benefit of this campaign. Given the corporate and campaign positions held by Mr. Cook and Ms. Lewis, it can not be said that the Committee was unaware that these prohibited resources of Cook Associates, Inc. were being used to benefit Mr. Cook's candidacy for federal office. The Cook Committee, however, never reported Ms. Lewis' activities and her use of Cook Slurry resources as in-kind contributions on any of its 1996 disclosure reports, in violation of 2 U.S.C. § 434(b).

There was also testimony that another Cook Slurry employee, Brett Jackman, on the instructions of Mr. Cook, set up, took down, transported and stored campaign signs. According to the evidence, these signs eventually ended up at a company owned plant

located in Lehi, Utah, where they remained for an unknown period of time. Mr. Jackman performed these services on company time utilizing company assets, including a Cook Slurry truck. (Nielson dep. at Vol. II, pgs 45-50; Lewis dep. at Vol. II, 268-272)

Generally, if a paid employee does campaign work on company time, the employer has made a contribution to the Committee. 11 CFR § 100.7(a)(3). Based on this fact pattern, it is clear that Representative Merrill A. Cook, as Mr. Jackman's employer and a corporate officer, was aware of, and consented to, the use of these corporate assets for the benefit of his 1996 congressional campaign. Given Representative Cook and Ms. Lewis' positions within the campaign structure, it appears that the Committee knowingly accepted these prohibited corporate resources. The Cook Committee did not report the activities of this Cook Slurry employee or the use of the corporation's resources as in-kind contributions on any of its 1996 disclosure reports.<sup>18</sup> Nor is there any indication that the company sought reimbursement for the use of these resources for the benefit of the campaign.

Given the evidence outlined above, it appears that, with the consent of Representative Merrill A. Cook, Cook Associates, Inc.s provided corporate personnel and resources to benefit Mr. Cook's 1996 campaign for Congress. In addition, it is clear that the respondent Committee was well aware that it was the beneficiary of this corporate assistance during the 1996 election cycle. This activity resulted in the corporation

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<sup>18</sup> Cook testified that a man named "Rousey" and another unnamed man were paid to put up and take down campaign signs. (Cook dep. at Vol. III pge 479) It is unlikely that this other man was Jackman as the testimony indicates that Jackman performed his duties around the time of the primary in June, while Rousey's involvement was apparently during the general election time frame. A man named "Rousay" is listed in the 1996 12 Day Pre-Election and 1996 30 Day Post-General reports as having been paid for such work.

making, with its President's consent, and the Committee accepting, in-kind corporate contributions in violation of 2 U.S.C. § 441b.

**III. CONCLUSION AND CONCILIATION PROPOSALS**

This Office recommends that the Commission generate Representative Merrill A. Cook and Cook Associates, Inc. as respondents in this matter. This Office also recommends that the Commission find reason to believe that Representative Merrill A. Cook, Cook Associates, Inc., the Cook 2000 Re-election Committee and Camille Cook, as treasurer, violated 2 U.S.C. § 441b during the 1996 election cycle.

This Office also recommends that the Commission offer to enter into conciliation prior to a finding of probable cause to believe

21.04.405.2257

**IV. RECOMMENDATIONS**

1. Find reason to believe that Representative Merrill A. Cook, Cook Associates, Inc., the Cook 2000 Re-election Committee, and Camille Cook, as treasurer violated 2 U.S.C. § 441b;
2. Enter into conciliation with Representative Merrill A. Cook, Cook Associates, Inc., the Cook 2000 Re-election Committee and Camille Cook, as treasurer, prior to a finding of probable cause to believe;

21.04.05.2258

3. Approve the attached Factual and Legal Analyses and proposed conciliation agreements and the appropriate letters.

Lawrence M. Noble  
General Counsel

12/27/00  
Date

BY: *Lois G. Lerner* by AAS  
Lois G. Lerner  
Associate General Counsel

Attachments:

1. March 5, 1996 Written Service Agreement
2. Checks: #111 and #114
3. Checks: #136; #140; #163; #167; #182; #195
4. Invoice #96139, Check #125
5. Invoice #96172, Check #203
6. Invoices #96173
7. Invoice #96182
8. Invoices: #s 96199; 96200
9. Nielson Billing Statement
10. Affidavit of Ted Phillips
11. Memorandum of Understanding and Agreement
12. Factual and Legal Analyses
13. Proposed Conciliation Agreements

Staff Assigned:

Marianne Abely

Services AGREEMENT

THIS AGREEMENT is made and entered into by and between R.T. Nielson Company ("Nielson"), and Merrill Cook both personally and the Merrill Cook for Congress Campaign, ("Client").

WHEREAS, Nielson is in the business of providing general consulting, fund raising, advertising and polling services and desires to be retained by Client; and

WHEREAS, Client desires to retain the services of Nielson for the purposes of providing general consulting, fund raising, advertising and polling services.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Retainment. Retainment shall commence on the date of this Agreement. All provisions of this Agreement, may be terminated by either party upon giving fourteen (14) days written notice, and subject to the provisions of ¶ 4,5 and 9 set forth below.

2. Duties of Nielson. In accepting retainment by Client, Nielson shall undertake and assume the responsibility of performing for and on behalf of Client all duties and responsibilities which are reasonably necessary to fulfill the purposes of this Agreement as set forth above.

In particular, Nielson shall oversee all general consulting for the campaign. This shall include campaign planning and strategy, convention management, delegate stacking and targeting, and other duties involved with general consulting. Nielson shall be required to oversee and administer all PAC fund raising activities. In addition Nielson shall provide polling, and advertising as required and needed by Client.

The provisions of this Agreement do not in any way preclude Nielson from receiving compensation or consideration from other sources or from engaging in similar type work for other clients or entities not in direct conflict with Client.

3. Duties of Client. Client covenants and agrees that he will comply with all reasonable demands or requests of Nielson to cooperate in the efforts employed by Nielson. This includes, but is not limited to, providing documents and information at the request of Nielson.

Client further covenants and agrees that Nielson is entitled to oversee and conduct all PAC fund raising, consulting, polling and advertising and that Client will not conduct any of these activities without first consulting with Nielson and will not in any way interfere with Nielson's efforts.

Client further agrees that it will be responsible for maintaining all campaign bank accounts and preparation of all state filing reports.

4. Consideration from Client. Client shall pay Nielson the following consideration on a monthly basis:

(a) Fund Raising. Nielson shall receive 15 % of the gross amount of all PAC monies received, regardless of the source. This agreement to perform PAC fund raising shall extend for a period of four months after the general election date.

(b) General Consulting. Nielson shall receive the sum of \$40,000 for consulting services through May 4, 1996. After May 4, 1996 and during the periods of the primary and general elections Nielson shall receive \$4,000 a month for general consulting. Additional services and fees may be negotiated and agreed to at a latter date.

(c) Polling. During the period of the convention Client agrees to pay Nielson .91 for 10,000 plus GOTV calls, and \$8.50 per contact for a delegate identification survey and \$6.00 per contact for two short delegate surveys. Additional services and fees may be agreed to between client and Nielson.

(d) Other Services. Compensation paid to Nielson for services of advertising and shall be agreed to in good faith by Client and Nielson.

(e) Bonus. Client agrees to pay Nielson the following bonuses upon successful election at the following events: \$5,000 Utah Republican Convention Second congressional district race first or second place win May, 1996; \$5,000 Utah Republican primary second congressional district race June, 1996, or whenever party nomination occurs; \$25,000 Utah general election second district race November, 1996.

5. Consideration upon Termination. If this Agreement is terminated by either party, Nielson shall still be entitled to one hundred percent (100%) of the agreed upon consideration up to and including the date of termination.

6. Working Facilities and Expenses. Nielson shall have full access to all campaign office facilities, staff, materials and equipment at no charge to Nielson. Any and all expenses associated with Nielson's duties under this Agreement, including, but not limited to, travel, mailings, telephone charges, long distance telephone calls and photocopies, shall be paid by Client and Nielson shall not be liable for any of these expenses. In addition, Client shall reimburse Nielson for any reasonable expenses incurred by Nielson, which otherwise should be paid by Client. Reimbursement for expenses shall not reduce the consideration paid to Nielson as set forth above.

7. Indemnification. Client agrees to indemnify Nielson and to hold Nielson harmless for any and all expenses incurred by Nielson in furtherance of the purposes of this Agreement. In addition, Client shall pay any and all reasonable attorney's fees incurred by Nielson to defend against any lawsuits or claims made for services rendered in connection with Nielson's duties under this Agreement and shall hold Nielson harmless and indemnify Nielson against any judgments entered against Nielson for any claim whatsoever arising out of Nielson's services rendered under this Agreement.

ATTACHMENT 1

Page 2 of 4

8. Limitation of Liability. Nielson's liability on any claim of any kind brought by client, whether based on negligence, warranty or otherwise, for any loss or damage arising out of, connected with or resulting from this Agreement or from the performance or breach thereof or from the use of any services furnished pursuant to this Agreement shall in no case exceed the price allocated to the service or material which gives rise to the claim. In no event shall Nielson be liable for special, incidental or consequential damages.

9. Non-Disclosure. During or at any time after termination of retainment hereunder, Client will not, without express written authorization of Nielson, disclose to or use for the benefit of any person, corporation or other entity any files, trade secrets or other confidential information concerning the business, clients, methods, operations, financing or services of Nielson. "Trade secrets" or "confidential information" shall mean information not generally known in the community as disclosed to Client or known by it as the consequence of its retainment of Nielson, whether or not pursuant to this Agreement, regardless of whether or not Client aided and/or was solely responsible for the gathering or compilation of this information or methods.

In addition, Client agrees that any and all market research studies, polls or polling results provided by Nielson shall remain the sole property of Nielson and Client shall not sell to any third parties, disclose to any third parties or otherwise use the results of any such market research studies or polls without the express written authorization of Nielson. The results of market research studies or polls conducted by Nielson are for the exclusive use of Client and not for the use of third parties. This paragraph, however, shall not be construed so as to prohibit Client from publishing in any newspaper or other media source the summary results of any such market research study or poll.

10. Injunctive Relief. Client recognizes that irreparable damage will result to Nielson if Client fails or refuses to perform any obligations under this Agreement, and that the remedy at law for any such failure or refusal will be inadequate. Accordingly, in addition to any other remedies and damages available, Nielson shall be entitled to injunctive relief, and Client may be specifically compelled to perform his obligations under this Agreement.

11. Burden and Benefit. This Agreement shall be binding upon, and shall inure to the benefit of Nielson and Client, and their respective heirs, personal and legal representatives, successors and assigns.

12. Severability. The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity and enforceability of the other provisions.

13. Governing Law. The construction and interpretation of this Agreement shall be governed by the laws of the State of Utah.

14. Attorneys Fees. The prevailing party to any litigation brought to enforce any provision of this Agreement shall be awarded its costs and attorneys fees.

ATTACHMENT 1

Page 3 of 4

15. Entire Agreement. This Agreement contains the entire agreement and understanding by and between Nielson and Client with respect to the retainment of Nielson, and no representations, promises, agreements or understandings, either written or oral, not contained herein shall be of any force or effect. No change or modification of this Agreement shall be valid or binding unless it is in writing and signed by the party intended to be bound. No waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or at any other time.

R.T. NIELSON COMPANY

Date: MARCH 5, 1996

By: *Ronald A. T.*

Its: *Tax*

Date: 3/5/96

*Merrill Cook*  
Merrill Cook, both personally and as  
a Representative of the Merrill Cook  
for Congress Committee

21-04-405-2263

4922 504 40 12

COOK FOR CONGRESS CAMPAIGN 3-96 31-1/1240 0510014194 111  
 1800 BENEFICIAL LIFE TOWER 801-533-0299  
 SALT LAKE CITY, UTAH 84111 DATE March 26, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 9,421.55

Nine Thousand, Four Hundred Twenty One and 55/100 DOLLARS

**First Security Bank** First Security Bank of Utah  
 79 South Main  
 Salt Lake City, Utah 84111

MEMO 96131,96118,96126 (add'l \$9000 owed) *Chris Lewis*

COOK FOR CONGRESS CAMPAIGN 3-96 31-1/1240 0510014194 114  
 1800 BENEFICIAL LIFE TOWER 801-533-0299  
 SALT LAKE CITY, UTAH 84111 DATE April 1, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 9,000.00

Nine Thousand DOLLARS

**First Security Bank** First Security Bank of Utah  
 79 South Main  
 Salt Lake City, Utah 84111

MEMO Completion of 96126 *Chris Lewis*

⑆ 240000 ⑆ 2⑆05 ⑆ 00 ⑆ 4 ⑆ 94 ⑆ 0 ⑆ 1 ⑆ 4 ⑆ 0000900000 ⑆

COOK FOR CONGRESS CAMPAIGN 3-96  
1800 BENEFICIAL LIFE TOWER 801-533-0299  
SALT LAKE CITY, UTAH 84111

31-171240  
0510014194

136

DATE May 15, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 8,333.00

Eight Thousand, Three Hundred Thirty Three DOLLARS

**First Security Bank**  
First Security Bank of Utah  
79 South Main  
Salt Lake City, Utah 84111

MEMO Inv. No. 96148

*Avis Lewis*

MP

COOK FOR CONGRESS CAMPAIGN 3-96  
1800 BENEFICIAL LIFE TOWER 801-533-0299  
SALT LAKE CITY, UTAH 84111

31-171240  
0510014194

140

DATE May 20, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 8,333.33

Eight Thousand, Three Hundred Thirty Three and 33/100 DOLLARS

**First Security Bank**  
First Security Bank of Utah  
79 South Main  
Salt Lake City, Utah 84111

MEMO Inv. 96150 - Management & Polling

*Avis Lewis*

MP

⑆124000012⑆0510014194⑆94⑆0140⑆0000833333⑆

COOK FOR CONGRESS CAMPAIGN 3-96  
1800 BENEFICIAL LIFE TOWER 801-533-0299  
SALT LAKE CITY, UTAH 84111

31-171240  
0510014194

163

DATE May 31, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 8,333.33

Eight Thousand, Three Hundred Thirty Three and 33/100 DOLLARS

**First Security Bank**  
First Security Bank of Utah  
79 South Main  
Salt Lake City, Utah 84111

MEMO Management - Week of 6-27-96

*Avis Lewis*

MP

⑆124000012⑆0510014194⑆94⑆0163⑆0000833333⑆

ATTACHMENT 3  
1 of 2

5922.504.40.12

21.04.405.2266

COOK FOR CONGRESS CAMPAIGN 3-96 31-1/1240 167  
 1800 BENEFICIAL LIFE TOWER 801-533-0299 0510014194  
 SALT LAKE CITY, UTAH 84111  
 DATE June 6, 1996

PAY TO THE ORDER OF R. T. Nielson Company \$ 8,333.33

Eight Thousand, Three Hundred Thirty Three and 33/100 DOLLARS

**First Security Bank.** First Security Bank of Utah  
 79 South Main  
 Salt Lake City, Utah 84111

MEMO Management Fee - Week of June 3 Avis Lewis AP

⑆ 1 240000 ⑆ 2⑆ 05 ⑆ 00 ⑆ 4 ⑆ 94 ⑆ 0 ⑆ 1 ⑆ 6 ⑆ 7 ⑆ 0000833333 ⑆

COOK FOR CONGRESS CAMPAIGN 3-96 31-1/1240 182  
 1800 BENEFICIAL LIFE TOWER 801-533-0299 0510014194  
 SALT LAKE CITY, UTAH 84111  
 DATE June 20, 1996

PAY TO THE ORDER OF R. T. Nielson Co. \$ 8,333.33

Eight Thousand, Three Hundred Thirty Three and 33/100 DOLLARS

**First Security Bank.** First Security Bank of Utah  
 79 South Main  
 Salt Lake City, Utah 84111

MEMO Campaign Management Avis Lewis AP

MC021

COOK FOR CONGRESS CAMPAIGN 3-96 31-1/1240 195  
 1800 BENEFICIAL LIFE TOWER 801-533-0299 0510014194  
 SALT LAKE CITY, UTAH 84111  
 DATE July 3, 1996

PAY TO THE ORDER OF R. T. Nielson Company \$ 8,333.33

Eight Thousand, Three Hundred Thirty Three and 33/100 DOLLARS

**First Security Bank.** First Security Bank of Utah  
 79 South Main  
 Salt Lake City, Utah 84111

MEMO Inv. 96168 Avis Lewis AP

⑆ 1 240000 ⑆ 2⑆ 05 ⑆ 00 ⑆ 4 ⑆ 94 ⑆ 0 ⑆ 1 ⑆ 9 ⑆ 5 ⑆ 0000833333 ⑆

# RT NIELSON C O M P A N Y

# Invoice

DATE | INVOICE

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

4/23/96 96139

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

### DESCRIPTION

### AMOUNT

TONER FOR COPIER	50.00
COPIES--4,700 X .05	235.00
LABELS	475.00
STATIONARY	1,840.00
POSTAGE FOR POSTCARDS, LETTERS & VIDEO	4,575.00

COOK FOR CONGRESS CAMPAIGN 3-96  
1800 BENEFICIAL LIFE TOWER 801-533-0299  
SALT LAKE CITY, UTAH 84111

31-171240  
0510014194

125

DATE April 30, 1996

PAY TO THE ORDER OF R. T. Nielson Company \$ 5,000.00

Five Thousand----- DOLLARS

**First Security Bank**  
First Security Bank of Utah  
79 South Main  
Salt Lake City, Utah 84111

MEMO Inv. 96139 (partial)

*Avis Lewis*

⑆ 240000 ⑆ 2:05 ⑆ 0014 ⑆ 94 ⑆ 0125 ⑆ 0000500000 ⑆

ATTACHMENT 4  
Page 1 of 1

Thank you for your business.

RN0505

**TOTAL**

\$7,175.00

21.04.405.2267

# RT NIELSON C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE INVOICE

6/26/96 96172

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

## DESCRIPTION

## AMOUNT

CONSULTING---BONUS FOR WINNING THE PRIMARY

5,000.00

COOK FOR CONGRESS CAMPAIGN 3-96  
1800 BENEFICIAL LIFE TOWER 801-533-0299  
SALT LAKE CITY, UTAH 84111

31-17 1240  
0510014194

203

DATE August 7, 1996

PAY TO THE ORDER OF R. T. Nielson Company

\$ 5,000.00

Five Thousand-----

DOLLARS

**First Security Bank.**

First Security Bank of Utah  
79 South Main  
Salt Lake City, Utah 84111

MC0220

Inv. # 96172

ATTACHMENT 5

Page 1 of 1

Thank you for your business.

RN0311

## TOTAL

\$5,000.00

21.04.405.2268

# RT NIELSON C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE INVOICE

6/26/96 96173

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

### DESCRIPTION

### AMOUNT

GOTV CALLS----6,667 X .75

*91 per Contract*

5,000.25

GOTV CALLS--3,500 X .75

2,625.00

ATTACHMENT 6

Page 1 of 2

Thank you for your business.

RN0004

**TOTAL**

\$7,625.25

6922 504 40 11

# Invoice

**RT NIELSON**  
C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

DATE | INVOICE

6/26/96 | 96173

**BILL TO:**

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

02225044012

DESCRIPTION	AMOUNT
AMENDED INVOICE TO SHOW CONTRACT PRICE	
GOTV CALLS---6,667 X \$.91	6,066.97
GOTV CALLS---3,500 X \$.91	3,185.00

ATTACHMENT 6  
Page 2 of 2

Thank you for your business.

RN0003

**TOTAL**

\$9,251.97



P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE | INVOICE

7/29/96 96182

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

1222-504-40-12

DESCRIPTION	AMOUNT
<p>COOK FOR CONGRESS CAMPAIGN</p> <p style="text-align: right;"><i>see</i> <i>96199</i> <i>96200</i></p> <p style="text-align: right;"><i>Ward</i></p> <p style="text-align: right;">ATTACHMENT <u>7</u> Page <u>1</u> of <u>1</u></p>	<p style="text-align: right;">150,000.00</p>

Thank you for your business.

**TOTAL** \$150,000.00

# RT NIELSON C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE INVOICE

7/29/96 96199

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

21.04.405.2272

DESCRIPTION	AMOUNT
BONUS FOR PRIMARY ELECTION	50,000.00

ATTACHMENT 8  
1 of 3

Thank you for your business.

RN0024

**TOTAL**

\$50,000.00

# RT NIELSON C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE INVOICE

7/29/96

95199

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

21.04.405.2273

DESCRIPTION	AMOUNT
GENERAL CONSULTING SERVICES	50,000.00

ATTACHMENT 8  
Page 2 of 3

Thank you for your business.

RN0025

**TOTAL**

\$50,000.00

# RT NIELSON C O M P A N Y

P.O. Box 11481  
Salt Lake City, Utah 84147  
(801) 359-1345 Fax (801) 355-6335

# Invoice

DATE INVOICE

7/29/96 96200

## BILL TO:

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

21.04.405.2274

DESCRIPTION	AMOUNT
CONSULTING FEE FOR GENERAL ELECTION	100,000.00

*10/29 - #263  
bill \$000.00*

ATTACHMENT 8  
Page 3 of 3

Thank you for your business.

RN0027

**TOTAL**

\$100,000.00

R. F. NIELSON CO.  
 P.O. BOX 11481  
 SALT LAKE CITY, UT 84147  
 801-359-1345

# Statement

DATE  
 1/21/97

**BILL TO**

MERRILL COOK  
 1800 BENEFICIAL LIFE TOWER  
 SALT LAKE CITY, UT 84111  
 ATTN: AVIS

AMOUNT DUE      AMOUNT ENC.  
 \$204,879.69

DATE	DESCRIPTION	AMOUNT	BALANCE
03/31/96	Balance forward		29,000.00
04/01/96	PMT #114	-9,000.00	20,000.00
04/01/96	PMT #115	-4,000.00	16,000.00
04/02/96	INV #96134	4,386.00	20,386.00
04/08/96	INV #96133	1,158.40	21,544.40
04/10/96	INV #96136	423.28	21,967.68
04/15/96	PMT #119	-13,967.68	8,000.00
04/19/96	INV #96137 - VOID:	0.00	8,000.00
04/23/96	INV #96138	4,215.15	12,215.15
04/23/96	INV #96139	7,175.00	19,390.15
04/29/96	INV #96141	3,450.00	22,840.15
04/29/96	PMT #123	-2,000.00	20,840.15
04/30/96	PMT #125	-5,000.00	15,840.15
05/02/96	PMT #129	-8,000.00	7,840.15
05/03/96	INV #96142	4,407.09	12,247.24
05/03/96	INV #96143	7,052.00	19,299.24
05/03/96	INV #96144	4,787.00	24,086.24
05/06/96	INV #96145	5,000.00	29,086.24
05/06/96	PMT #132	-27,000.00	2,086.24
05/10/96	INV #96148	8,333.33	10,419.57
05/15/96	PMT #136	-8,333.00	2,086.57
05/15/96	INV #96150	8,333.33	10,419.90
05/15/96	INV #96151	933.26	11,353.16
05/21/96	PMT #140	-8,333.33	3,019.83
05/21/96	INV #96153	251.10	3,270.93
05/21/96	INV #96154	8,333.33	11,604.26
05/31/96	PMT #163	-8,333.33	3,270.93
05/31/96	INV #96162	8,333.33	11,604.26
05/31/96	INV #96163 - WEEK OF MAY 27, 1996	1,005.19	12,609.45
06/07/96	PMT #167	-8,333.33	4,276.12
06/07/96	INV #96165	1,038.85	5,314.97
06/07/96	INV #96166	8,333.33	13,648.30
06/18/96	INV #96168	8,333.33	21,981.63
06/18/96	INV #96169	2,178.09	24,159.72

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
0.00	25,517.52	3,179.31	63,644.24	112,538.62	\$204,879.69

ATTACHMENT 9  
 Page 1 of 3

21-04-405-2275

# Statement

R. T. NIELSON CO.  
 P.O. BOX 11481  
 SALT LAKE CITY, UT 84147  
 801-359-1345

DATE  
 1/21/97

**BILL TO**

MERRILL COOK  
 1800 BENEFICIAL LIFE TOWER  
 SALT LAKE CITY, UT 84111  
 ATTN: AVIS

21.04.405.2236

AMOUNT DUE                      AMOUNT ENC.  
 \$204,879.69

DATE	DESCRIPTION	AMOUNT	BALANCE
06/20/96	PMT #182	-8,333.33	15,826.39
06/21/96	PMT #187	-579.00	15,247.39
06/24/96	INV #96170	305.95	15,553.34
06/24/96	INV #96171	579.00	16,132.34
06/26/96	INV #96172	5,000.00	21,132.34
06/26/96	INV #96173	9,251.97	30,384.31
07/03/96	PMT #195	-8,333.33	22,050.98
07/03/96	PMT #196	-5,712.44	16,338.54
07/29/96	INV #96184	1,837.89	18,176.43
07/29/96	INV #96199	50,000.00	68,176.43
07/29/96	INV #96200	100,000.00	168,176.43
08/08/96	PMT #203	-5,000.00	163,176.43
09/05/96	PMT #212	-8,000.00	155,176.43
09/12/96	INV #96212	3,249.64	158,426.07
09/12/96	INV #96213	2,666.63	161,092.70
09/17/96	PMT #215	-5,000.00	156,092.70
09/18/96	PMT #216	-5,000.00	151,092.70
09/20/96	PMT	-2,500.00	148,592.70
09/30/96	INV #96235	2,862.61	151,455.31
10/02/96	INV #96244 - VOID:	0.00	151,455.31
10/02/96	PMT #227	-8,000.00	143,455.31
10/07/96	PMT #232	-8,000.00	135,455.31
10/15/96	INV #96255	1,900.00	137,355.31
10/15/96	PMT #245	-1,900.00	135,455.31
10/15/96	PMT #246	-8,000.00	127,455.31
10/16/96	INV #96256	1,083.31	128,538.62
10/16/96	INV #96257	2,715.84	131,254.46
10/16/96	PMT #248	-2,715.84	128,538.62
10/22/96	PMT	-8,000.00	120,538.62
10/29/96	PMT #263	-8,000.00	112,538.62
11/08/96	INV #96355	23,826.90	136,365.52
11/08/96	INV #96356	12,318.67	148,684.19
11/08/96	INV #96357	25,000.00	173,684.19
11/08/96	INV #96359	2,498.67	176,182.86

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
0.00	25,517.52	3,179.31	63,644.24	112,538.62	\$204,879.69

ATTACHMENT 9  
 Page 2 of 3

R.- T. NIELSON CO.  
P.O. BOX 11481  
SALT LAKE CITY, UT 84147  
801-359-1345

# Statement

DATE  
1/21/97

**BILL TO**

MERRILL COOK  
1800 BENEFICIAL LIFE TOWER  
SALT LAKE CITY, UT 84111  
ATTN: AVIS

21.04.405.227

AMOUNT DUE                      AMOUNT ENC.  
\$204,879.69

DATE	DESCRIPTION	AMOUNT	BALANCE
11/26/96	INV #96366	562.88	176,745.74
11/26/96	INV #96367	403.93	177,149.67
12/06/96	INV #96370	0.00	177,149.67
12/10/96	INV #96372	2,212.50	179,362.17
01/20/97	INV #97106	13,526.20	192,888.37
01/20/97	INV #FC 6 - FINANCE CHARGE	11,991.32	204,879.69

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
0.00	25,517.52	3,179.31	63,644.24	112,538.62	\$204,879.69

ATTACHMENT 9  
Page 3 of 3

MAR 21 2 31 PM '97

RECEIVED  
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JAN 20 1997

Scott N. Rasmussen [5226]  
Todd D. Weiler [7671]  
SCALLEY & READING  
Attorneys for Respondent  
Phillips, Twede & Spencer, Inc.  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7870  
Facsimile: (801) 531-7968

<p>Utah State Democratic Committee,  Complainant,  vs.  Merrill Cook, Merrill Cook for Congress Committee,  Respondent(s).</p>	<p>AFFIDAVIT OF TED R. PHILLIPS    MUR 4621</p>
--	---

STATE OF UTAH )  
 : SS  
COUNTY OF SALT LAKE )

I, Ted R. Phillips, having been first duly sworn, hereby state as follows:

1. I am the Vice President of Phillips, Twede & Spencer, Inc. ("PTS"), a Utah corporation with its principal place of business in Salt Lake County, Utah. At all times relevant hereto PTS was in the business of performing advertising services.

2. In March of 1996, Merrill Cook and/or the Merrill Cook for Congress Committee (collectively, "Cook") entered into an oral contract (the "Contract") with PTS, whereby PTS was to provide certain advertising and related services on an 'as requested' basis

8722 504 40 12

in connection with Cook's campaign for the United States House of Representatives.

3. In connection with the Contract, PTS rendered services for and on behalf of Cook which included, without limitation, conceiving, creating, producing, and placing both print and electronic advertising media.

4. On or about December 15, 1996, I informed Cook that, after taking into consideration all of the payments Cook had previously made, Cook owed PTS an additional \$16,689.18 for services rendered.

5. On December 18, 1996, Cook sent PTS a letter, together with a check in the amount of \$4,012.56, proposing that such amount be a final settlement of Cook's account with PTS. In such December 18 letter, Cook alleged, among other things, that, to the detriment of Cook, a key PTS' shareholder/employee had moved to another locale during the middle of the campaign, that Cook had been overcharged for services, and that services from PTS had not been timely rendered.

6. PTS did not -- and does not -- admit to the validity of the claims raised by Cook, and did not accept the proposal that Cook's entire account be settled for the amount of \$4,012.56. PTS did, however, cash the check it received, and applied such amount to the total arrearage on Cook's account.

21.04.405.2279

7. After taking into consideration the December 18, 1996 payment made by Cook, PTS believed that it was owed a balance of \$12,676.62.

8. On or about January 30, 1997, and after several meetings, significant telephonic and other negotiations, and PTS causing a proposed complaint to be drafted, PTS and Cook reached a settlement (the "Settlement") that Cook would pay, to PTS, the amount of \$8,994.09 as payment in full for all services rendered by PTS. Such Settlement was memorialized in a certain Memorandum of Understanding and Agreement, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference.

9. Although PTS did not -- and does not -- admit to the validity of the claims raised by Cook, PTS does believe that such claims were colorable in nature. Accordingly, in entering into the Settlement and agreeing to the amount it received in connection therewith, PTS considered the colorable nature of the claims raised by Cook.

10. As a consequence of the foregoing PTS at no time intended to make a 'contribution' or a 'loan' to Cook of the amount of the difference between the \$12,676.62 which PTS claimed was owed and the \$8,994.09 which was finally paid. Instead, such difference represented a negotiated compromise that took into consideration the various matters and claims raised by each of PTS and Cook.

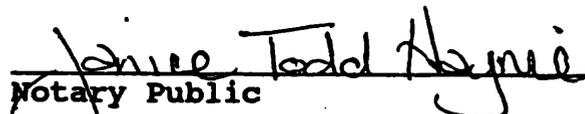
0822 504 40 12  
21 04 405 2280

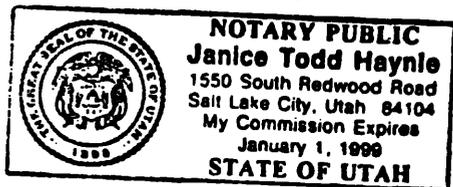
11. As a consequence of the Settlement, Cook has now made payment in full and PTS considers the matter resolved.

FURTHER AFFIANT SAITH NOT.

  
Ted R. Phillips

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of March, 1997.

  
Notary Public



1822 504 40 12  
21 04 405 2201

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

This Memorandum of Understanding and Agreement is entered in to between Phillips Twede Spencer Advertising and or Evan Twede ("PTS" hereinafter) and Merrill Cook and the Cook for Congress Campaign ("Cook" jointly hereinafter) to settle and resolve the billing dispute between them.

PTS hereby accepts the sum of \$8,994.09 (eight thousand nine hundred ninety-four dollars and nine cents) and acknowledges receipt of that amount as payment in full for all services performed by PTS and Evan Twede and any vendors who subcontracted with PTS and Evan Twede for Cook in 1996. It is agreed and understood that no other amounts are owed by Cook to PTS or its vendors for any services of any nature related to the Cook 1996 election campaign.

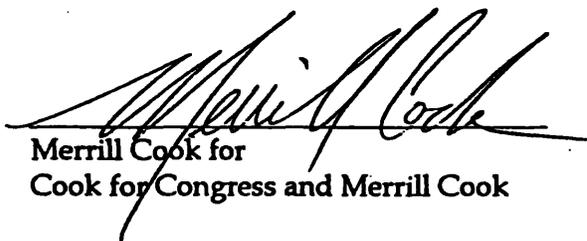
Both PTS and Cook hereby agree to waive and release any and all claims against the other, of whatever nature, arising from the relationship between the parties to this date except for a breach of this Memorandum of Understanding and Agreement.

In the event either party shall breach the terms of this Memorandum of Understanding and Agreement, the breaching party shall be liable to the enforcing party for costs of enforcement including attorneys' fees.

DATED this 30<sup>th</sup> day of January, 1997.



Ted Phillips for  
Phillips Twede Spencer Advertising



Merrill Cook for  
Cook for Congress and Merrill Cook

21.04.405.2282



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *RD*

DATE: December 27, 2000

SUBJECT: General Counsel's Rpt. #2 - MUR 4621

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

CIRCULATIONS

DISTRIBUTION

SENSITIVE   
NON-SENSITIVE

COMPLIANCE

72 Hour TALLY VOTE

Open/Closed Letters

24 Hour TALLY VOTE

MUR

24 Hour NO OBJECTION

DSP

INFORMATION

STATUS SHEETS

Enforcement

Litigation

PFESP

96 Hour TALLY VOTE

RATING SHEETS

AUDIT MATTERS

LITIGATION

ADVISORY OPINIONS

REGULATIONS

OTHER

21-04-405-2283